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APPLICATION NO.	1	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/615,336 07/08/2003		07/08/2003	Hilmar Br. Janusson	OSSUR.015A	8761	
20995	7590	04/05/2006		EXAMINER		
		NS OLSON & I	STEWART, ALVIN J			
2040 MAIN FOURTEE			ART UNIT	PAPER NUMBER		
IRVINE, CA 92614				3738		
				DATE MAILED: 04/05/2006		

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of time may be available under the provision of 37 CFR 1.136(a). In no event, however, may a reply be timely filled at the CN (6) MONTH'S from the making date of this communication.  Failute to reply while the set or catendad prinder preply with, by status, cause the application to become ABANDHOE (3 U.S. C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filled, may reduce any seared patter them adjustment. Set 37 CFR 1.704(b).  Status  1)   Responsive to communication(s) filled on 12 January 2006.  2a) This action is FINAL.  2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 12-14.18 and 24-31 is/are pending in the application.  4a) Of the above claim(s) is/are allowed.  6) Claim(s) 13-14.18.24.25.27.28.30 and 31 is/are rejected.  7) Claim(s) is/are allowed.  6) Claim(s) 13-14.18.24.25.27.28.30 and 31 is/are rejected.  7) Claim(s) is/are allowed.  8) The specification is objected to by the Examiner.  Application Papers  9) The specification is objected to the text mainer.  Application Papers  9) The specification is objected to by the Examiner.  Application Papers  9) The specification is objected to by the Examiner.  Application Papers  9) The cath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) All b) All b) Some * c) None of:  1 Certified copies of the priority documents have been received in Application No,  2 Copies of the certified c		Application No.	Applicant(s)						
Alvin J. Stewart   3738   37	Office Action Comment	10/615,336	JANUSSON ET A	JANUSSON ET AL.					
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensives of the major be available under the provision of 37 CFR 1:130(i). In or event, however, may a reply be timely filed.  If NO period for reply is apposlied above, the maximum statutory pariod will apply and will expire SN (6) MONTHS from the mailing date of this communication.  Failure to reply within the set or excended period for reply in specified above, the maximum statutory pariod will apply and will expire SN (6) MONTHS from the mailing date of this communication, even if timely filed, may reduce any search particle than eliquence. Set of 27R 1:740(i).  Status  1) □ Responsive to communication(s) filed on 12 January 2006.  2a □ This action is FINAL.  2b □ This action is non-final.  3) □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) □ Claim(s) 12-14.18 and 24-31 is/are pending in the application.  4a) Of the above claim(s) is/are pending in the application.  4a) Of the above claim(s) is/are allowed.  5□ Claim(s) 13.14.18.24.25.27.28.30 and 31 is/are rejected.  7) □ Claim(s) 13.14.18.24.25.27.28.30 and 31 is/are rejected.  7) □ Claim(s) 13.14.18.24.25.27.28.30 and 31 is/are rejected.  7) □ The specification is objected to by the Examiner.  Application Papers  9) □ The specification is objected to by the Examiner.  10) □ The drawing(s) filed on □ is/are: a) □ accepted or b) □ objected to by the Examiner.  Application Papers  9 □ The drawing(s) filed on □ is/are: a) □ accepted or b) □ objected to by the Examiner.  Application Papers  10) □ The drawing(s) filed on □ is/are: a) □ accepted or b) □ objected to by the Examiner.  11) □ All b) □ Some * c) □	Oπice Action Summary	Examiner	Art Unit						
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## Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 18 & 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Thompson et al US Patent 6,922,592 B2.

Thompson et al discloses a liner (see Fig. 5) having an inner and outer layer, a physiological sensor and a transmitter. Additionally Fig. 4 discloses a sock-like configuration.

Regarding the functional language of claim 28, expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). In order to be given patentable weight, a functional recitation must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279.

The phrase "configured to" has been identified as an intended use limitation because is typical of claim limitations which may not distinguish over prior art according to the principle. It has been held that the recitation that an element is "configured to" performing a function is not a positive limitation but only requires the ability to so perform.

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### Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 13-14, 25, 27-28 and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al US Patent 6,922,592 B2 in view of Muz US Patent 5,054,488.

Thompson et al discloses the invention substantially as claimed. However, Thompson et al does not disclose external and internal layers having a sensor between the layers.

Muz teaches a device comprising a plurality of sensors with a transmitter and external and internal layers having a sensor between the layers for the purpose of protecting the sensors from the surrounding (see col. 5, lines 8-30).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Thompson reference with the Muz reference in order to protect the sensors from the surrounding.

#### Allowable Subject Matter

Claims 12, 26 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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#### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J. Stewart whose telephone number is 571-272-4760. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ALVIN J. STEWART PRIMARY EXAMINER Art Unit 3738

April 03, 2006.